

Office Research Ref. Center
BRANCH EXPERIMENTATION
BRIEF HISTORY

HEW OFFICE OF INSPECTOR GENERAL

SEPTEMBER 10.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Brooks, from the Committee on Government Operations, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 15390]

The Committee on Government Operations, to whom was referred the bill (H.R. 15390) to establish an Office of Inspector General within the Department of Health, Education, and Welfare, and for other purposes, having considered the same, report favorably thereon with a technical amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 12, line 17, strike out "Executive" and insert "General".

EXPLANATION OF AMENDMENT

The original language of H.R. 15390 contained an inadvertent reference to the "Executive Schedule" for compensation of Federal officials where a reference to the "General Schedule" for compensation of civil service employees had been intended. The amendment corrects this error.

PURPOSE AND SUMMARY

H.R. 15390 would establish a new office in the Department of Education, and Welfare with no program responsibilities. The office would conduct and supervise audits and investigations relating to the programs and operations of the Department.

The office would also provide leadership and coordination and recommend policies for activities designed to promote economy and efficiency in the administration of, and to prevent and detect fraud in, such programs and operations.

In addition, the office would provide a means for keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the administration of the Department's programs and operations and the necessity for and progress of corrective action.

The office would be headed by an Inspector General appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General would report to and be under the general supervision of the Secretary or the Under Secretary, but would not be under the control of or subject to supervision by any other officer of the Department.

A Deputy Inspector General, appointed in the same manner as the Inspector General, would assist the Inspector General and serve as Inspector General during a vacancy or the absence or temporary incapacity of the Inspector General.

The Inspector General or the Deputy could be removed from office by the President. The President would be required to communicate the reasons for any such removal to both Houses of Congress.

The Inspector General would have responsibility for conducting audits and investigations and for coordinating other activities designed to promote economy and efficiency and to prevent and detect fraud and abuse, including relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to such matters.

The Inspector General would have specific responsibility for recommending corrective action concerning fraud and other serious problems, abuses, and deficiencies and for reporting to the Secretary and the Congress on the progress made in implementing such corrective action.

In addition to an annual report to the Secretary and the Congress on activities of the office, the Inspector General would make quarterly reports identifying recommended corrective actions on which adequate progress is not being made. The Inspector General would report immediately to the Secretary and appropriate Congressional committees whenever the office became aware of particularly serious or flagrant problems, abuses, or deficiencies.

In order to prevent lengthy delays resulting from HEW "clearance" procedures, reports or information would be submitted by the Inspector General to the Secretary and the Congress without further clearance or approval. Copies of annual and quarterly reports would, insofar as practicable, be submitted by the Inspector General to the Secretary sufficiently in advance of the due date for submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.

In carrying out provisions of H.R. 15390, the Inspector General is specifically authorized to obtain necessary information by subpena and to request necessary information or assistance from any Federal, State, or local governmental agency or unit thereof.

H.R. 15390 further provides for the Inspector General to have direct and prompt access to the Secretary when necessary for the performance of the duties of the office.

Two existing HEW units—the Audit Agency and the Office of Investigations—would become component parts of the Office of Inspec-

tor General. Additional HEW units or functions related to the duties of the Office of Inspector General could be transferred to the Office with the consent of the Inspector General, but no program operating responsibilities could be so transferred.

COMMITTEE INVESTIGATION

H.R. 15390, a bill to establish an Office of Inspector General for the Department of Health, Education, and Welfare, is based upon information obtained during more than eighteen months of study and investigation by the committee's Intergovernmental Relations and Human Resources Subcommittee.

After preliminary work beginning in late 1974, the subcommittee held hearings on HEW procedures and resources for prevention and detection of fraud and program abuse in April, May and June 1975.¹ A comprehensive report on the subcommittee's continuing investigation was approved by the full committee in January 1976.²

Hearings relating directly to establishment of an HEW Office of Inspector General were held during May 1976.³ During the hearings, consideration was given to the overall concept of an Office of Inspector General, as well as to specific provisions of pending bills.

MAGNITUDE OF HEW FRAUD AND ABUSE PROBLEM

HEW's operations present, in the words of one of its Assistant Secretaries, "a vast potential for fraud and program abuse."⁴

HEW administers around 300 separate programs, with expenditures estimated to total about \$145 billion during fiscal year 1977—more than one-third of the entire Federal budget.⁵ A substantial percentage of the huge amount is not under the direct control of HEW, but is disbursed by non-Federal entities such as States, localities, educational institutions, fiscal agents, intermediaries, carriers and grantees.⁶

Although evidence presented at the subcommittee's 1975 hearings made it abundantly clear that tremendous losses are being incurred through fraud and abuse in HEW programs, witnesses from the Department were unable to provide reliable information on which a specific estimate of losses could be based.⁷

Since that time, the Secretary has estimated that losses totaling \$750 million annually from fraud and abuse are being incurred under the Medicaid program alone.⁸ Other estimates are substantially higher; for example, the New York State Welfare Inspector General has estimated Medicaid losses in that single State at more than \$500 million per year.⁹

¹ Hearings before a subcommittee of the Committee on Government Operations, HEW Procedures and Resources for Prevention and Detection of Fraud and Program Abuse, April 22, 30; May 15, 22; June 24, 1975; hereafter cited as "1975 hearings."

² House Report 94-786, hereafter cited as "report."

³ Hearings before a subcommittee of the Committee on Government Operations, Establishment of an Office of Inspector General in the Department of Health, Education, and Welfare, May 25 and 27, 1976; hereafter cited as "1976 hearings."

⁴ 1975 Hearings, p. 7.

⁵ Report, p. 13; 1977 expenditure estimate obtained from HEW.

⁶ 1975 Hearings, pp. 14-15.

⁷ Report, pp. 8, 15-17.

⁸ Statement at March 26, 1976, news conference, based on data supplied by the Medical Services Administration.

⁹ Testimony before the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, February 13, 1976, pp. 85-86.

DEFICIENCIES DISCLOSED BY SUBCOMMITTEE INVESTIGATION

As outlined below, the subcommittee investigation disclosed serious deficiencies in the organizational structure, procedures and resources being used by HEW to combat fraud and abuse and promote economy and efficiency in its programs:

Fragmented organizational structure.—The subcommittee found that units responsible for combating fraud and abuses and for promoting economy and efficiency were scattered throughout HEW in a haphazard, fragmented and confusing pattern, with no single unit having the overall responsibility and authority necessary to provide effective leadership. Personnel of most such units lacked independence because they reported to and were hired and fired by officials directly responsible for the programs involved.¹⁰

The subcommittee also found that HEW Audit Agency and the central Office of Investigations reported to different Assistant Secretaries, with no high-level departmental official having overall responsibility for coordination and leadership of audit and investigative activities.¹¹

Until recently, HEW officials did not even know how many different units within the Department were engaged in activities specifically related to the promotion of economy and efficiency. A study performed at the request of the subcommittee indicated there are 63 such units, with a total of 3,642 employees directly engaged in such activities.¹²

Lack of information.—The subcommittee found that information needed by both HEW and Congress for effective action against fraud and abuse was simply not available. There was no central source of data concerning fraud and abuse nor, evidently, had any meaningful attempt been made to evaluate the overall fraud and abuse problem.¹³

Even when information was—or should have been—readily available, it was sometimes subject to lengthy delay in being provided to Congressional committees requesting it because of HEW's "clearance" processes. For example, a four-page report repeatedly requested by the subcommittee was not provided for more than 11 months, for reasons even the Under Secretary could not explain.¹⁴ Moreover, on at least one occasion, admittedly inaccurate information was provided to a Congressional committee concerning the adequacy of HEW's investigative resources.¹⁵

Inadequate resources.—The subcommittee found that HEW's investigative resources were ridiculously inadequate. Although HEW had more than 129,000 full-time employees, its central investigative unit had only 10 investigators, with a 10-year backlog of uninvestigated cases. Only one individual was assigned to guard against fraud and abuse in the Medicaid program, which accounted for nearly \$7 billion in Federal expenditures alone during fiscal year 1975.¹⁶

¹⁰ Report, pp. 8-9, 27-30.

¹¹ Report, pp. 8-9, 21-22.

¹² 1976 Hearings, pp. 47-48, 81-99.

¹³ Report, pp. 8, 15-16.

¹⁴ 1975 Hearings, pp. 2-3, 379; 1976 hearings, pp. 24-25, 115.

¹⁵ Report, p. 36; 1976 hearings, p. 38.

¹⁶ Report, pp. 9-10, 34-35.

Testimony on the HEW appropriation for 1977 indicates that the Department's audit manpower falls about 500 man-years short of meeting its workload requirements.¹⁷

The subcommittee found that HEW, at least partially because of its fragmented organizational structure, had failed to make effective use of the limited resources it had.¹⁸

Failure to take prompt corrective action.—The subcommittee found that even when serious deficiencies did become known to responsible HEW officials, corrective action was sometimes not taken until literally years alter, if taken at all. For example, although HEW officials testified that much program abuse comes back because of badly designed legislation, the Department was unable to find a single instance in which it had clearly taken the initaitive to call such a situation to the attention of the appropriate Congressional committees.¹⁹

The subcommittee found evidence of inexcusable delays in taking clearly needed administrative remedial action. During May 1975, for example, its investigation disclosed that two separate sets of investigators looking into fraud and abuse in the Medicare and Medicaid programs were not allowed to tell each other which providers they were investigating, even though the same providers might be suspected of fraud under both programs. Despite assurances of prompt corrective action, hearings in May 1976—more than a year later—disclosed that HEW regulations still did not permit such exchange of information.²⁰

The HEW Audit Agency, as a result of its audits, makes many recommendations for badly needed improvements in HEW procedures. However, program officials often fail to take timely action to implement such recommendations. At the end of 1975, according to testimony at subcommittee hearings, there were 490 outstanding audit reports on which timely action had not been taken.²¹

EFFECT OF H.R. 15390

In its January 1976 report, the Committee on Government Operations unanimously recommended that action be taken to place overall responsibility for coordination and leadership of HEW auditing and investigative activities in a single individual with no program responsibilities who would report directly to the Secretary. The committee further recommended that this official should be held directly responsible for informing the Secretary of serious problems disclosed by audits and investigations and of the progress or lack of progress in correcting such problems.²²

H.R. 15390 would accomplish this objective by providing for a high-level official with no program responsibilities, reporting directly to the Secretary, who would be responsible for giving undivided attention to the prevention and detection of fraud and abuse and the promotion of economy and efficiency in HEW's programs and operations.

¹⁷ Hearings before a subcommittee of the Committee on Appropriations, House of Representatives, Departments of Labor, Health, Education, and Welfare Appropriations for 1977, Part 6, p. 854.

¹⁸ Report, pp. 9, 36-37.

¹⁹ Report, pp. 10, 40; 1976 Hearings, pp. 49-50, 63.

²⁰ 1975 Hearings, pp. 113-116, 175-177; 1976 Hearings ,pp. 50-51.

²¹ 1976 Hearings, p. 71.

²² Report, p. 11.

H.R. 15390 would significantly improve HEW's organizational structure by establishing a central unit to provide leadership for and coordinate activities relating to the prevention and detection of fraud and program abuse and the promotion of economy and efficiency. While only the Audit Agency and the Office of Investigations would initially be transferred to the new Office of Inspector General, additional units and functions could be transferred by the Secretary where appropriate. In order to promote objectivity and prevent possible conflicts of interest, no program operating responsibilities could be assigned to the Office.

H.R. 15390 would substantially increase the likelihood that information needed by both the Secretary and Congress for effective action against fraud and abuse will be available to them on a timely basis. The new Office of Inspector General would serve as a central source of data concerning fraud and abuse. Immediate reports to the Secretary and Congress would be required whenever the Office of Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies. The Inspector General would also be required to inform the Secretary and appropriate congressional committees when adequate progress is not being made on significant recommendations for corrective action. Lengthy delays in furnishing information due to HEW "clearance" procedures would be eliminated by requiring that reports of the Inspector General be submitted without such clearance.

While H.R. 15390 would have no direct effect on the level of resources available to promote economy and efficiency and prevent and detect fraud and program abuse, it would help to achieve more effective use of such resources through better coordination and the elimination of duplication. It also provides for Congress to be informed without delay in the event resources being requested are considered by the Inspector General to be seriously inadequate.

H.R. 15390 would help secure more effective and timely corrective action by requiring that the Inspector General not only make recommendations for such action, but also keep the Secretary and the Congress informed about progress or lack of progress in implementing them. Moreover, through direct access to the Secretary and other means, the Inspector General would be in a position to help expedite the implementation of urgently needed corrective action.

COMMITTEE VOTE

H.R. 15390 was reported by the Committee on Government Operations by a unanimous vote, with a quorum present.

SECTION-BY-SECTION ANALYSIS OF H.R. 15390, AS AMENDED

Section 1 of the bill establishes an Office of Inspector General and describes its broad purpose as the creation of an independent and objective unit—

(1) to conduct and supervise audits and investigations relating to programs and operations of the Department of Health, Education, and Welfare;

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy and efficiency in the

administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

Section 2(a) provides for the appointment of an Inspector General by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General is to report to and be under the general supervision of the Secretary or, to the extent such authority is delegated, the Under Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

Section 2(b) provides for a Deputy Inspector General, appointed in the same manner as the Inspector General, who is to assist the Inspector General in the administration of the Office and serve as Inspector General during a vacancy or the absence or temporary incapacity of the Inspector General.

Section 2(c) provides that the Inspector General or the Deputy may be removed from office by the President; in the event of any such removal, the President shall communicate the reasons to both Houses of the Congress.

Section 2(d) makes clear that the Inspector General and the Deputy are subject to restrictions against partisan political activity applicable to civil service employees, even though not actually civil service employees.

Section 2(e) provides for appointment of Assistant Inspectors General for Auditing and for Investigations. These officials would be civil service employees and would be responsible for supervising performance of the duties currently being carried out by the Audit Agency and the Office of Investigations. These units would be transferred to the new Office of Inspector General, and it is likely that the persons now serving as directors of the units would become Assistant Inspectors General.

Section 3(a) assigns to the Inspector General primary responsibility for auditing and investigative activities relating to programs and operations of the Department and for other activities carried out or financed by the Department for the purpose of promoting economy and efficiency or preventing and detecting fraud and abuse.

In addition to establishing policies for and conducting activities of this type which are under the direct control of the Office of Inspector General, the Inspector General would have responsibility for recommending policies for and coordinating activities of this type being carried out by other Departmental units.

The Inspector General would have similar direct or indirect responsibilities regarding relationships between HEW and other Federal, State or local governmental agencies, and nongovernmental entities involving promotion of economy and efficiency, prevention and detection of fraud and abuse, and the identification and prosecution of participants in fraud and abuse. The Inspector General would not conduct prosecutions or decide whether prosecutions should or should not

be conducted, but would undoubtedly provide assistance to officials charged with responsibility for prosecuting such cases.

The Inspector General is further charged with responsibility for keeping the Secretary and the Congress fully and currently informed concerning serious problems, abuses and deficiencies relating to programs and operations of the Department, for recommending corrective action, and for reporting on progress made in implementing such corrective action.

Section 3(b) provides specific authority for the Inspector General to approve or disapprove the use of outside auditors or to take other appropriate steps to insure the competence and independence of such auditors.

Section 3(c) directs the Inspector General to give particular regard to activities of the Comptroller General in order to avoid duplication and insure effective coordination and cooperation.

Section 4(a) provides for an annual report to the Secretary and the Congress describing significant problems, abuses and deficiencies in HEW operations and programs disclosed by activities of the Office, together with recommendations made for corrective action, and an evaluation of the progress made in implementing such recommendations.

Section 4(b) provides for a quarterly report to the Secretary and appropriate committees or subcommittees of the Congress identifying significant recommendations for corrective action on which adequate progress is not being made.

It is intended that this report be limited to recommendations which the Inspector General regards as particularly important, rather than constituting a listing of all outstanding recommendations on which timely action has not been taken.

Section 4(c) provides for an immediate report to the Secretary and the appropriate committees or subcommittees of the Congress whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies in Department programs and operations. The Deputy and Assistant Inspectors General are charged with particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.

This subsection would not require the Inspector General to report on every investigation, but is designed to insure that the Secretary and the Congress are promptly informed of developing problem areas.

Section 4(d) provides that the Inspector General may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable. The purpose of this language is to insure that no restrictions are placed upon the Inspector General's freedom to investigate fraud, program abuse and other problems relating to HEW activities.

Section 4(d) also provides for the Inspector General to provide information or documents requested by Congress or congressional committees. The purpose of this language is merely to emphasize that information or documents available to the Inspector General are to be provided on request; it is not intended to imply that the Inspector Gen-

eral is required to conduct studies or investigations at the request of congressional committees. The Inspector General would not, of course, be prohibited from making requested studies or investigations on a voluntary basis.

Section 4(e) provides for required reports or information to be transmitted to the Secretary and Congress or its committees without further clearance or approval. The purpose of this section is to eliminate lengthy delays in furnishing information due to HEW "clearance" procedures. Copies of annual and quarterly reports would, insofar as practicable, be submitted by the Inspector General to the Secretary sufficiently in advance of the due date for submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.

Section 5(a)(1) makes clear that the Inspector General is to have access to all records, documents, etc., available to HEW which relate to programs and operations with respect to which the Office has responsibilities.

Section 5(a)(2) authorizes the Inspector General to request necessary information or assistance from any Federal, State, or local governmental agency or unit thereof.

Section 5(a)(3) provides subpoena authority for the Inspector General when necessary to carry out provisions of H.R. 15390.

Section 5(a)(4) makes clear that the Inspector General is to have direct and prompt access to the Secretary when necessary in carrying out the duties of the Office.

Section 5(a)(5) requires the Inspector General to inform the Congress without delay in the event the budget request for the Office of Inspector General is reduced, before submission to Congress, to an extent considered seriously detrimental to the adequate performance of the responsibilities of the Office.

Section 5(a)(6) authorizes employment of personnel.

Section 5(a)(7) authorizes employment of experts and consultants.

Section 5(a)(8) authorizes contractual arrangements for audits, studies and other services necessary to carry out the provisions of H.R. 15390.

Section 5(b) provides for Federal agencies to furnish information or assistance requested by the Inspector General, insofar as is practicable and not in contravention of any existing statutory restriction or applicable regulations of the agency concerned.

This section also provides for the Inspector General to report the circumstances to the Secretary and appropriate congressional committees in the event requested assistance, is in the judgment of the Inspector General, unreasonably refused.

The section provides further for the Inspector General to receive the same treatment under the Privacy Act as the Comptroller General, in the event any requested information is not already available under existing provisions of that Act.

Section 5(c) provides for the Secretary to furnish the Office of Inspector General with suitable office space and supporting services.

Section 5(d) provides that the Inspector General is to be compensated at the rate provided for level IV of the Executive Schedule

(which is the rate applicable to HEW Assistant Secretaries) and for the Deputy to be compensated at the rate applicable to Level V.

Section 6(a) transfers the functions, powers and duties of the present Audit Agency and Office of Investigations to the Office of Inspector General. It also provides that the Secretary may transfer additional offices or agencies, or functions, powers or duties thereof, where appropriate and with the consent of the Inspector General. In order to insure that the independence and objectivity of the Office is not compromised, transfer of program operating responsibilities to the Office would be prohibited.

Subsections (b) through (d) of Section 6 contain technical provisions relating to the transfer of the Audit Agency and the Office of Investigations, including provisions designed to prevent unintended adverse effects on the personnel involved.

Section 7 contains definitions of terms used in H.R. 15390.

COST ESTIMATE

H.R. 15390 does not provide any new budget authority; its costs would be financed from existing and future appropriations for the Department of Health, Education, and Welfare. Most costs of the Office of Inspector General in the immediate future will be attributable to auditing and investigative activities which would be carried out whether or not the Office of Inspector General is established. H.R. 15390 does create two new positions and additional personnel will undoubtedly be required in the future. However, it is anticipated that any expenditures for these purposes will be offset many times over through savings and recoveries attributable to establishment of the Office.

The committee's cost estimate is consistent with that of the Congressional Budget Office, which appears below. No other cost estimates were received from any Federal agency.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, SEPTEMBER 10, 1976

The cost estimate from the Congressional Budget Office follows:

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 10, 1976.

Hon. JACK BROOKS,
Chairman, Committee on Government Operations,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 15390, a bill to establish an Office of Inspector General within the Department of Health, Education, and Welfare, and for other purposes.

The intent of the legislation is to utilize existing departmental resources for the Office of Inspector General. To that end, the functions, powers, and duties of the HEW Audit Agency and Office of Investi-

gations within HEW are to be transferred to the Office of Inspector General. Finally, the existing and future departmental management appropriations are to be used for the salary of the Inspector General and his deputy.

Because of the utilization of existing resources, it appears that no additional costs to the government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

INFLATIONARY IMPACT

Since the enactment of H.R. 15390 would be expected to result in a reduction in expenditures, rather than additional net costs, it would have no inflationary impact on prices and costs in the operation of the national economy.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Findings, Conclusions and Recommendations from the committee's oversight report (House Report 94-786, January 26, 1976) follow:

FINDINGS AND CONCLUSIONS

The findings and conclusions in this report are based on an comprehensive review by the subcommittee of procedures and resources used by the Department of Health, Education, and Welfare to prevent and detect fraud and abuse in its programs. This inquiry is continuing and is expected to include consideration, early this year, of legislation to establish an Office of Inspector General for the Department.

On August 6, 1975, after completion of the hearings which provided the documentary base for this report, the subcommittee chairman wrote HEW Secretary Mathews to alert him to the serious problem being disclosed by the subcommittee investigation and to urge that corrective action be initiated as soon as possible.

While no formal reply to the August 6 letter has yet been received, it is known that HEW is taking actions related to matters discussed in the letter. A copy of the letter is in the Appendix to this report.

On the basis of the subcommittee investigation to this date, the Committee reached the following specific findings and conclusions:

1. The Department of Health, Education, and Welfare currently is responsible for about 300 separate programs involving expenditures in excess of \$118 billion annually—more than one-third of the entire Federal budget. Because of the magnitude and complexity of its activities, aggravated in many instances by lack of direct control over expenditures, HEW's operations present an unparalleled danger of enormous loss through fraud and program abuse.

2. HEW officials responsible for prevention and detection of fraud and abuse have little reliable information concerning the extent of losses from such activities.

There is no central source of data concerning fraud and abuse nor, evidently, has any meaningful attempt been made to evaluate the overall extent of the fraud and abuse problem. Statistics which are available are often incomplete and unreliable.

HEW officials were unable to provide such basic information as an accurate count of the number of HEW programs until more than five months after the information was initially requested. During this period, at least four different figures on the number of HEW programs were supplied to Congressional committees, ranging from a low of 250 to as many as 320.

Without adequate information, neither HEW officials nor Congress can accurately measure either the need for or the effectiveness of action to prevent and detect fraud and program abuse, nor can priorities for use of available resources be determined on a rational basis.

3. Fraud and abuse in HEW programs are undoubtedly responsible for the loss of many millions of dollars each year. The committee has not attempted to name a specific figure at this time because HEW officials could not provide information on which a reliable estimate of such losses could be based.

4. HEW units charged with responsibility for prevention and detec-

tion of fraud and program abuse are not organized in a coherent pattern designed to meet the overall needs of the Department.

There is no central unit with the overall authority, responsibility and resources necessary to insure effective action against fraud and abuse. Under its charter, the Office of Investigations and Security has departmentwide responsibility for leadership, policy direction, planning, coordination and management of investigations. However, its authority over operations of the Social Security Administration has been effectively nullified as the result of agreement made by non-OIS officials; moreover, OIS could not possibly carry out its assigned responsibilities with the hopelessly inadequate resources it now has.

Fraud and abuse units other than OIS and the Audit Agencies are scattered throughout HEW in a haphazard, fragmented and often confusing pattern. Some major programs have no fraud and abuse unit, while other units exist mostly on paper. Some units have no personnel in field offices; in other instances, field personnel are not subject to the direction and control of the unit's headquarters. Personnel of most units work exclusively and continuously on a single program, and are not available to help correct more serious problems elsewhere.

5. Personnel of most HEW fraud and abuse units lack independence and are subject to potential conflicts of interest because they report to officials who are directly responsible for managing the programs the unit is investigating. Under these circumstances, employees may be inhibited in making an honest and thorough report that could embarrass their superiors.

The independence of the Office of Investigations is restricted in another way. Under current arrangements, OIS may not initiate any investigation without specific approval of the Secretary or Under Secretary. In addition to the obvious restriction on the independence of OIS, this procedure creates an unnecessary burden for the Secretary or Under Secretary and places them in the undesirable position of having to decide personally whether or not suspected irregularities are to be investigated. Any safeguards necessary to insure that inappropriate investigations are not conducted should be imposed through carefully adopted procedures and guidelines, rather than individual decisions by the Secretary or Under Secretary.

6. Under current organizational arrangements, there is little assurance that the Secretary will be kept informed of serious fraud and abuse problems, or that action necessary to correct such problems will be taken. The OIS charter does not provide for guaranteed access to the Secretary or Under Secretary. Most other fraud and abuse units report to program officials, usually at a relatively low level. Since those receiving reports of fraud and abuse problems are likely to be responsible for the programs involved, there may be little incentive for such officials either to call problems to the attention of the Secretary or to initiate prompt and aggressive corrective action which could result in public laundering of their own dirty linen.

7. Resources devoted by HEW to prevention and detection of fraud and program abuse are ridiculously inadequate. Although HEW has more than 129,000 full-time employees, the Office of Investigations and Security has had only ten investigators.

At least partially because of its fragmented organizational structure, HEW has failed to make effective use of the resources it has. As a

result, OIS has a ten-year backlog of uninvestigated cases; at the same time, the 11 investigators in the SSA Investigations Branch have been so underutilized that the unit has no significant backlog and has left 8 investigative positions unfilled.

Although the total number of persons reported assigned to fraud and abuse units is about 300, more than 180 of them work exclusively on the Medicare program, and most of the remainder are assigned to other programs of the Social Security Administration. Individuals working in OIS and the SSA Investigations Branch are qualified investigators, but personnel assigned to other units may have no substantial investigative training or experience.

8. There are serious deficiencies in the procedures used by HEW for the prevention and detection of fraud and program abuse. Until recently, HEW had not advised employees of the Department that they had an obligation to call information indicating possible fraud or abuse to the attention of appropriate officials. Moreover, there is no departmentwide policy for or centralized supervision of the referral of possible fraud cases for prosecution.

The subcommittee's investigation disclosed instances in which it took as long as five years or more for HEW to take corrective action after deficiencies in its regulations became known. Part of the blame can be attributed to cumbersome procedures for changing regulations; however, some delays were so lengthy as to indicate the almost total lack of any sense of urgency.

RECOMMENDATIONS

The committee recommends that the Secretary of Health, Education, and Welfare carefully review this report with a view to taking corrective action concerning the deficiencies disclosed herein. Specific recommendations follow:

1. It is expected that the subcommittee will give further attention to deficiencies in the organizational structure of HEW fraud and abuse units early next year in connection with its consideration of legislation to establish an Office of Inspector General for the Department of Health, Education, and Welfare. In the meantime, the committee recommends that the Secretary take appropriate steps to place the HEW Audit Agency, the Office of Investigations and Security, and the SSA Investigations Branch under the overall direction of a single official who reports directly to the Secretary and has no program responsibilities. To the extent feasible, other HEW investigative personnel should be included in this organizational arrangement.

Such action could be taken without affecting the status of OIS and the Audit Agency as separate units, nor would it require reassignment of personnel to work on different programs. However, it would place overall responsibility for coordination and leadership of auditing and investigative activities in a single individual reporting directly to the Secretary. This official should be held directly responsible for informing the Secretary of serious problems disclosed by audits and investigations and of the progress or lack of progress in correcting such problems.

2. The committee recommends that the Secretary immediately discontinue the requirement that OIS obtain prior clearance from the Secretary or Under Secretary before initiating investigations.

3. The committee recommends that the Secretary initiate an immediate review of HEW fraud and abuse problems and the personnel and resources being used to combat such problems. This review should include an effort to determine:

(a) The nature and magnitude of fraud and abuse problems confronting HEW and the extent, to which prompt and effective action is or is not being taken to correct them;

(b) The extent and nature of resources presently available to HEW which might be effectively used for the prevention and detection of fraud and program abuse;

(c) The extent to which additional resources are needed, taking into account any improvements which can be made through more efficient use, organization or reassignment of available personnel; and

(d) The manner in which responsibility for combating fraud and abuse is presently allocated between HEW and State governments and the effectiveness of such arrangements.

The committee requests that the Secretary provide it with a report on the results of this review as soon as feasible.

4. The committee recommends that the Secretary take prompt action to correct procedural deficiencies discussed in this report. In particular, the committee recommends that the strongest possible action be taken to insure that serious deficiencies known to exist in program regulations are corrected promptly.

LETTER FROM HON. L. H. FOUNTAIN TO HON. F. DAVID MATHEWS

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 6, 1975.

Hon. F. DAVID MATHEWS,
*Secretary-Designate, Department of Health, Education, and Welfare,
Washington, D.C.*

DEAR MR. SECRETARY: As I indicated in my letter of August 5, I am writing to call to your attention some specific problems in HEW's operations which appear to me to call for urgent remedial action.

As you may know, the Intergovernmental Relations and Human Resources Subcommittee is reviewing the resources and procedures utilized by the Department of Health, Education, and Welfare to prevent and detect fraud and abuse in its programs. In connection with this inquiry, the subcommittee requested background information in March of this year and held public hearings in April, May and June.

A formal report on the subcommittee's continuing investigation is now being prepared and is expected to be ready in the near future. It is also my expectation that the subcommittee will give consideration in the near future to the establishment of a statutory Office of Inspector General for the Department of Health, Education, and Welfare.

The report now being prepared will contain a detailed account of the subcommittee's findings, conclusions and recommendations. However, in view of very serious deficiencies disclosed by the subcommittee's investigation, I thought it advisable to write to you in advance of the report to urge that corrective action be initiated as soon as possible.

Since the subcommittee's report has not yet been completed, it would be inappropriate for me to try to speak for other members of the subcommittee at this time. However, in my judgment, the subcommittee's investigation clearly disclosed that:

1. Fraud and abuse in HEW programs are causing enormous losses and greatly reducing the effectiveness of HEW programs. Resources used to combat fraud and abuse are so inadequate and disorganized that HEW officials have little or no reliable information concerning the actual amount of such losses.

2. According to its charter, as published in the Federal Register, the Office of Investigations and Security has departmentwide responsibility and authority for policy direction, planning, coordination and management of investigations. However, HEW has not complied with this stated policy. Instead, there evidently is an unwritten agreement that OIS shall take no part in investigative matters involving the Social Security Administration, even though SSA programs account for more than 80% of all HEW expenditures.

3. The Office of Investigations and Security is responsible for reporting directly to the Secretary on fraud and abuse in HEW programs. However, even though HEW programs involve more than 129,000 employees and expenditure of \$118 billion annually, OIS has only 10 investigators to investigate allegations of fraud. Five of HEW's ten regional offices do not have a single professional investigator assigned. When the subcommittee began its hearings in April, OIS had a four-year backlog of uninvestigated cases; that backlog has now grown to approximately ten years.

4. There are thirteen additional professional investigators working for HEW, who do not report to the Secretary. These investigators are assigned to the Investigations Branch of the Social Security Administration's Office of Administration, and work only on cases referred to them by SSA program units. These investigators currently have no backlog—primarily because very few cases are being referred to them.

5. There are also a number of quasi-investigative units which report to the administrators of some HEW programs. These units do not report to the Secretary, and apparently were established on an individual basis rather than as part of a coherent and coordinated overall plan to help provide the Secretary with information needed to combat fraud and abuse in HEW programs. There has been little or no coordination between units working on such closely related programs as Medicare and Medicaid.

The subcommittee's report will undoubtedly go into considerably more detail, but I am sure the above points are more than sufficient to illustrate the basis for my concern.

Pending issuance of the subcommittee's report, I want to urge that you give immediate personal attention to strengthening the procedures and resources used by HEW to prevent and detect fraud and program abuse, and to suggest specifically that:

1. Immediate action be taken to make the SSA Investigations Branch a part of OIS, thereby bringing HEW's investigative operations into compliance with the Department's stated policy. This would also make presently underutilized investigative resources available to meet the pressing needs of the Department.

2. An immediate review be made of personnel and resources being utilized for the prevention and detection of fraud and program abuse with a view to evaluating Departmental needs and available resources, and taking appropriate action to insure a high degree of cooperation and coordination among auditors, investigators and program managers.

3. Immediate action be taken to assign at least one qualified investigator to each regional office; if necessary, this could be accomplished by transferring qualified investigators from program units to OIS.

I hope these comments and suggestions will be helpful to you. If you would like any additional information concerning any of the matters discussed above, please feel free to have the appropriate member of your staff contact the subcommittee Counsel, Mr. Naughton.

Best personal regards.

Sincerely,

L. H. FOUNTAIN, *Chairman.*

SUPPLEMENTAL VIEWS OF HON. BENJAMIN S. ROSENTHAL

I applaud the actions of the committee in reporting out this bill. In the 18 months which have elapsed since I introduced the original measure, evidence of mismanagement, fraud and abuse in HEW has swelled. In some programs, improper or illegal expenditures may now account for half of the total dollars consumed.

The root of the problem is the federal government's deferral of its investigatory and oversight responsibilities to the states.

The federal student loan program is an example of activity crippled by fraud, mismanagement and/or abuse. The HEW Office of Guaranteed Student Loans, with a total of \$3.3 billion in federally insured loans, experienced an 18% default rate in fiscal year 1975, a figure which is expected to have grown to 20% in fiscal 1976.

It is not surprising that HEW cannot monitor effectively its multi-billion dollar budget. The Office of Investigations and Security (OIS), HEW's principal oversight agency, has 24 investigators and a 10-year backlog of cases to monitor HEW's \$140 billion budget. This small staff must police the performance of 129,000 HEW employees in their management of over 300 complex government programs that directly or indirectly affect the daily lives of tens of millions of Americans.

HEW has sought to cope with the huge potential for abuse by enlisting the aid of the states. This cooperation must continue but the evidence is overwhelming that it is no substitute for vigorous federal oversight. Many states do not have the resources or the experience to cope with the multitude of sophisticated schemes and devices used to evade the law. Moreover, there are many investigatory techniques, such as wider use of computer audits, which can only be undertaken economically at the federal level. Many fraudulent operations cross state lines or duplicate themselves in many areas of the country. A nationwide approach and perspective in meeting these challenges is essential.

There is a direct correlation between increased federal enforcement efforts and the detection of fraud. The 100 cases pending before the OIS offer a potential savings or recovery of \$20 million. In addition, 70% of the state prosecutions for Medicaid fraud have been conducted by California, which has a staff of 74, the largest Medicaid investigatory staff in the country. California's achievements in this area are in sharp contrast with those of the twenty-one states which have no investigations staff, and consequently, are totally inactive in fraud and abuse detection.

I am an ardent supporter of our nation's social service programs. For this reason I feel even more strongly that every effort must be made to rid these programs of the waste and fraud which deprives the needy and deserving of billions of dollars a year in intended support.

As a member of this committee, I have recognized that governmental structure plays a critical role in the formulation of policy. I am afraid

that the investigatory framework at HEW is timeworn, rusty and inadequate and is inappropriate to the function it is asked to perform.

The legislation approved by this committee would provide HEW with the tools essential to the exercise of its oversight responsibilities. The Inspector General would be appointed for a 10-year term by the President with the advice and consent of the Senate. He would have the power to subpoena persons, records and documents. This authority, which is indispensable for an adequate investigatory agency, is not presently enjoyed by HEW investigators.

The usefulness of inspectors general has been confirmed by the GAO. A recent GAO report found that inspectors general are integral to the economic efficiency of the agencies which they serve.

Some question has been raised about vesting the HEW Inspector General with subpoena power. This is the only way to insure complete access to information. Many federal regulatory agencies, including the SEC, FTC and FCC, have this right. Without it, an inspector general's office is forced to rely on the information which those being investigated want him to have. This precludes any effective evidence-gathering and undermines the office from its inception.

The organizational placement of the Inspector General's Office is also important. As recognized by a GAO review of the activities of the Agriculture Department Office of Inspector General, an effective inspector general must be independent of the officials directly responsible for the operations he reviews. This insures the inspector general maximum independence and permits objectivity and impartiality in his oversight of departmental activities.

The credibility of the federal government is severely threatened by the gross mismanagement of our social welfare programs. This bill provides HEW with the tools necessary to restore some of this lost confidence.

BENJAMIN S. ROSENTHAL.



CMS LIBRARY



3 8095 00017559 2